IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26/08/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

W.P. No.18619 of 1998
and W.P.Nos. 18620, 18621, 18632, 18633, 18638,
18653, 18505, 18506 AND 19737 OF 1998
and
WMP Nos.28268, 28270, 28273, 28286, 28289, 28296, 28317,
28049, 28052, 29904, 29765, 29766, 29767, 29768, 29769,
29770, 29771, 29773, 29764 and 24235 of 1999

W.P. No.18619 of 1998:

C. Guruvaboyan ..... Petitioner

-Vs-

1. The Director of Survey and
Settlement, Chennai

2. The Assistant Director of Survey
and Land Records, Salem

3. The Registrar
Tamil Nadu State Administrative Tribunal
Chennai 104

4. M. Pachiannan
5. P. Karuppannan
6. K. Subramaniam
7. S.R. Doraisamy
8. K. Natesan
9. C. Alavamuthu
10. M. Muthusamy
11. R. Tamilselvan
12. M. Palanivelan
13. S. Balamurugan
14. A. Chandrasekaran
15. A. Balaji
16. S. Marimuthu

(respondents 4 to 16 are Surveyors/

Draftsman/Land Record Draftsman in
the office of the Assistant Director
of Survey and Land Records, Salem) ..... Respondents

Petition under Art.226 of the Constitution of India,
praying for a Writ of Certiorarified Mandamus
as stated in the petition

For Petitioners :: Mr. R. Thiagarajan,
Senior Counsel for
Mr. M. Kandasamy
Mr. L. Chandrakumar

For Respondents :: Mr. S.T.S. Murthy,
Govt. Advocate for
respondents 1 and 2
Mr. K.S. Viswanathan
for respondents 4 to 12

:ORDER

V.S. SIRPURKAR, J.

This judgment will dispose of the aforesaid ten writ petitions as the subject is common. In all the writ petitions, the petitioners are working in the Survey and Land Department in the posts of Firka Surveyors or Sub Inspectors of Survey. They challenge the common order passed by the Tamil Nadu Administrative Tribunal (in short 'the Tribunal'), dismissing the original applications filed by them. In those original applications, the petitioners had challenged three proceedings which had the effect of depriving them of their original seniority and showing them as juniors which could result in their reversions as also could adversely affect their monetary benefits. The petitioners in effect challenged the order dated 22-9-1995 issued by the Director of Survey and Settlement, Chennai in which, the said authority crystallized the principles of fixing the seniority, the order and the seniority list dated 19-1-1996 wherein, the Assistant Director, in pursuance of the aforementioned order dated 22-9-1995, fixing the temporary seniority of the petitioners, showing them much junior than their original positions and the final order dated 10-10-1996, which is a confirmed seniority list, which has been finalised even after the objections raised by the petitioners. Basically, the petitioners' seniority is fixed on their initial entry into the service in the post of Surveyor on consolidated salary.

2. For better appreciation of the controversy, the following facts are necessary:
2.1. All the petitioners came to be appointed on 28-3-1983 as

Surveyors (hereinafter called 'Consolidated Surveyors') in the Salem District, which cadre is a District cadre, and they were receiving the consolidated salary of Rs.450/-. Obviously, they were not in the regular cadre. Respondents in these petitions are also the persons who were appointed like the petitioners in the post of Surveyors on consolidated salary but, it is an admitted position that the respondents were admitted earlier to the petitioners. Petitioners were brought on regular time scale with effect from 1-7-1984 while the respondents lagged behind and were brought on the regular time scale only on 28-3-1988. Petitioners were brought on the regular time scale in pursuance of G.O. Ms. No.910 dated 10-8-1983. Petitioners were further regularised by two Government Orders, viz. G.O. Ms. No.626 dated 16-4-1990 and G.O. Ms. No.851 dated 23-5-1990 but, with effect from 1-7-1984. Very significantly, the respondents were, however, not regularised like the petitioners. Before that, on 23-8-1985, a seniority list came to be published of the Surveyors/Drftsman selected from among the consolidated Surveyors/Draftsman in the district of Salem and who were appointed on the time scale of pay under Rule 10(a)(i) of the general rules. They were in all 115 persons and the petitioners are to be found in the said list. Admittedly, respondents 4 to 16 are not to be found in this seniority list because, obviously, they were not brought on the time scale by then.

2.2. There was a scheme introduced in the year 1987 called ' Restoration of Maintenance Scheme' in which a new post was created called ' Firka Surveyors' and the petitioners came to be promoted as Firka Surveyors on 6-7-1988. Subsequently, all the petitioners came to be promoted further as the Sub Inspectors of Survey on 6-4-1991. So far the respondents were neither brought on the time scale nor offered promotions like petitioners. It is an admitted position that respondents 4 to 16 were brought on time scale on 28-3-1988 and were thereafter given the promotions as Firka Surveyors.

2.3. In the year 1990 an original application (O.A. No.199) came to be filed at the instance of the four applicants of South Arcot District wherein, a challenge was made to an order dated 30-11-1989, passed by the Director of Survey and Land Records whereby he appointed 29 persons on time scale. In these 29 persons, 7 were ladies who were appointed on the principle of 30% reservation for women. The applicants contended that these 7 ladies were junior to them and yet they came to be appointed ignoring their seniority and that there could not have been any such reservation because the principle of reservation apply only to vacancies filled up by recruitment and in fact, the appointments were from the post of Consolidated Surveyors to the Timescale Surveyors and, therefore, it would be a promotion and hence, the principle of reservation would not be applicable thereto.

2.4. The Tribunal allowed this application by its order dated 9-9-1999. In this, the Tribunal found that the posts of Surveyors were within the purview of Tamil Nadu Public Service Commission and the concerned persons were appointed on consolidated pay in regular vacancies but only on temporary basis. The Tribunal further held that though these persons were on consolidated pay and not on time-scale, they were no less department personnel and, therefore, their appointment in the time-scale posts would not be governed by the principles of reservation. According to the Tribunal, what was being done in offering the time-scale to these persons was only the change of terms of service of these persons. The Tribunal, therefore, held:

"For this reason we direct that as far as the temporary appointments are

concerned only the seniority among the person on a consolidated pay with reference to the date of their appointment would be relevant. In fairness, when a category employed on a temporary basis is sought to be given better terms, that should be viewed as a fresh appointment. Therefore, we direct that the temporary appointment in the time scale of pay in accordance with the orders in G.O. Ms. No.910 C.T. & R.E. dated 10-8-1983 may be made strictly in accordance with the seniority among the personnel on consolidated pay."

2.5. It has come on record that this order was challenged before the Supreme Court by the Government but, that was dismissed in limine in motion hearing. It has also come on record that this order was sought to be reviewed on the ground that it would create enormous difficulties. However, that review application has also been dismissed and it is further brought on record that even the challenge before the Supreme Court did not succeed which dismissed the Special Leave Petition in limine.

2.6. This probably prompted the Director to pass the first impugned order dated 22-9-1995. The Director took this order to be a fiat issued by the Tribunal to re-arrange the whole seniority list of all the persons though the Tribunal, in the said original application, called upon to decide only the question as to whether the said lady employees could have been promoted on the basis of reservation.

2.7. Taking a cue from the order passed by the Director, the Assistant Director then re-arranged the seniority and thereby treated the petitioners to be juniors to the persons who were appointed earlier in the post of Consolidated Surveyors. Though the order of the Tribunal was passed in the year 1991, the Director passed the first order on 22-9-1995, after about five years and the Assistant Director on 10-10 -1996 whereby, the petitioners, who were higher in the seniority list, were shown down below whereas, the respondents were shown much above.

2.8. In short, the petitioners, who had the seniority in time-scale from 1-7-1984, were shown to have their entry into the time-scale on 28-3-1988 whereas the respondents, who were brought on time-scale on 28-3-1988 were shown as having earned their e-scale on 1-7-1984.

2.9. The objections raised by the petitioners were also not accepted and, therefore, the petitioners were driven to file the original applications as they did. The respondents chose to make an impleadment application before the Tribunal and got themselves impleaded as party-respondents.

2.10. The Tribunal dismissed this original application taking the view predominantly that the seniority in the time scale was correctly decided and the principle of seniority in the appointment for the post of consolidated surveyors was the only correct principle for deciding the seniority in the regular cadre. The Tribunal has also heavily relied on the fact that its' earlier order in O.A. No.199 of 1990 was confirmed by the Supreme Court inasmuch as the Special Leave Petition was dismissed against the same. The petitioners have now come before us challenging the order of the Tribunal.

3. Shri R. Thiagarajan, learned senior counsel and Shri M. Kandasamy, learned counsel appearing for the petitioners firstly contend that though the petitioners were appointed on the post of Consolidated Surveyors somewhat after a few months than the respondents, the fact remains that the

petitioners were selected out of these Consolidated Surveyors serving in Salem District on the basis of their performance and, therefore, the petitioners were meritorious candidates so as to be awarded the time-scale even earlier to the respondents. Learned senior counsel points out that the award of the time-scale, almost four years earlier to the respondents, was never demurred by the respondents. Learned senior counsel further points out that in all these years, the petitioners, who were brought on the time-scale by their selection, got much more salary than the respondents and yet the respondent had kept quiet.

4. Learned counsel relied very heavily on the instructions issued by the Department in that behalf which are to be found in the Government letter dated 6-10-1983 and more particularly paragraph 5, which runs as under:
"The Contract employee will be appointed in the time-scale post in accordance with (a) rule of reservation and (b) seniority as determined under item 1 above. Provided that a person who has not given the prescribed out-turn of work in the preceding six months shall not be appointed." (emphasis supplied)
Learned counsel, therefore, says that it was obvious that the respondents were not given the time-scale probably because they had not given the prescribed turnout of work as required by these instructions and, therefore, there could be no question of the respondents being treated senior who were in fact superseded because of their not having given the required turnout. The further contention of the learned counsel is that it is for this reason that in the seniority list dated 2 8-8-1993, the petitioners were shown and the respondents were not shown.

5. It is also suggested that even the regularisation awarded to the petitioners was with effect from 1-7-1984 which decision was also never challenged by the respondents and even the further promotions granted to the petitioners as Firka Surveyors on 6-7-1988 and to the post of Sub Inspector on 6-4-1991 was also not challenged. The learned counsel, therefore, submitted that in fact right from 1983 upto 199 6, i.e. for sixteen long years, the petitioners were not only working as the senior-employees to the respondents but, apart from being granted the regular time-scale, they were regularised earlier and given not one but two promotions which were never demurred by the respondents and, therefore, it was not feasible on the part of the respondents to upset the whole seniority that too after the period of more than thirteen years because of which, obviously, the petitioners would not only be required to suffer wage-cut but also to face reversions in some cases.

6. Learned counsel pointed out that the reliance on the part of the Government on the order of the Tribunal in O.A. No.199 of 1990 was wholly uncalled for and so also the Tribunal had never addressed this question of promotion having been given to the petitioners not on the basis of reservation but on the basis of their performance. Learned counsel pointed out that the Tribunal in O.A. No.199 of 1990 was faced with the sole question that too regarding the seven lady employees who were appointed on the basis of the reservation and therefore that decision should have been read only to the extent of the question decided and not beyond the same. Learned counsel

severely criticised the impugned order of the Director in drawing conclusions from the order of the Tribunal in O.A. No.199 of 1990 and pointed out that it was impermissible.

7. Learned counsel further severely criticised the Tribunal's order on the ground that the Tribunal had also committed an error in treating its earlier order as the order of the Supreme Court merely because the Supreme Court had dismissed the Special Leave Petition against the same in limine. The contention is that by the dismissal in limine, all that the Supreme Court had indicated was that the Special Leave Petition was not entertainable against the judgment. The State Government authorities went a step ahead and drew its own conclusions from that judgment and have tried to implement the same and thereby the whole exercise has become arbitrary and hence discriminatory. According to the learned counsel, at any rate, even if that judgment was to be followed by the State Government it should have been done not retrospectively but prospectively.

8. As against this, Shri Viswanathan, learned counsel appearing for the respondents supported the Government's stand as also the impugned order of the Tribunal. His contention mainly is that the award of time-scale to the petitioners in itself was bad because it could not be done ignoring the seniority under G.O. Ms. No.910 dated 10-8-1983 which alone decided the principles on the basis of which the timescales were to be granted to the Consolidated Surveyors. Learned counsel points out that in the service jurisprudence, if a particular benefit was awarded, accepting a certain principle, the same would be applicable to all whether they were parties to the said decision or not. Learned counsel further argues that there was nothing wrong in fixing the seniority as the principle for promotion and if the petitioners were given an unfair advantage over and above the respondent, all that was being done by the State Government was to correct their mistake and, therefore, there was no question the exercise being arbitrary or discriminatory. Learned counsel further argues that even further promotions which were awarded to the petitioners were purely on the basis of seniority and were of temporary nature without conferring any right on the petitioners and, therefore, the petitioners could not claim any vested right on the basis of those promotions and, therefore, the exercise by the State Government was correct and the impugned order of the Tribunal was also correct.

9. Learned Government Advocate supported the impugned order and adopted the arguments made by Shri Viswanathan, learned counsel for the respondents. The Government has filed a counter-affidavit wherein, a clear-cut position has been taken that it was in pursuance of the order passed by the Tribunal and more particularly in O.A. No.199 of 1990 that the first impugned order dated 22-9 -1995 came to be passed by the Director providing the guidelines for the District Survey Unit offices and thereby directed to revise and regularise all the appointments made in the time-scale.

10. In their counter also, the Government has specifically mentioned that the Special Leave Petition against the aforementioned order of the Tribunal was dismissed by the Supreme Court. It

is, therefore, obvious that the order of the Tribunal in O.A. No.199 of 1990 became raison d'etre for the subsequent order dated 22-9-1995 and it is obvious that the Government as also the Tribunal subsequently were driven by the fact that the Special Leave Petition against that order was dismissed. It will be, therefore, better for us to find out as to what is the real nature of the order of the Tribunal in O.A. No.199 of 1990.

11. When we closely look at the order of the Tribunal dated 9-9-19 91, it is obvious that there was a simple question raised as to whether there could be 30% reservation in favour of the seven ladyrespondents and could they steal a march on that basis over their senior colleagues like the applicants therein. All that the Tribunal said in that order was that the principle of reservation could not be made applicable because the grant of time-scale would be in the nature of promotion and, therefore, the principle of reservation would not be applicable to them. The Tribunal goes on to explain that merely because the applicants therein were on the consolidated pay and not on time-scale, they were no less department personnel and that since the regular posts were to be filled-up through Tamil Nadu Public Service Commission, such person could not be said to have been appointed by direct recruitment. According to the Tribunal, in the grant of regular time-scale all was done was only the change of terms of service. The Tribunal, therefore, did not accept the principle of reservation and, since the challenge was made on the basis of seniority, observed that the time-scale should be granted only on the basis of seniority.

12. Now it is trite principle in law that a judgment becomes binding only on the issues which fall before the Court for consideration. The inferences cannot be drawn from the judgment and those inferences cannot be held to be binding on the basis that they emanate from the judgment. That is exactly what has happened here. The Tribunal did not have before it the material or the necessary documents to consider the question which has fallen for consideration later on at the instance of the present petitioners. The Tribunal did not have before it the facts and the circumstances under which the persons like the petitioners came to be brought on time-scale even superseding the persons like the respondents. It cannot be disputed that there were departmental instructions dated 6-10-1983 wherein, there was a specific condition included that a person who did not give the prescribed turnout of work in the preceding six months would not be appointed in the regular time-scale.

13. We have already quoted paragraph 5 of the departmental instructions dated 6-10-1983 and it must be remembered that these instructions were the first in time after G.O. Ms. No.910 dated 10-8-1983 whereby it was decided to offer the time-scale to the Surveyors on consolidated pay. This direction in these guidelines was never in challenge nor was it ever fell for consideration of the Tribunal at any time though the question of issue of reservation and seniority as contemplated in G.O. Ms. No.910 dated 10-8-1983 was obliquely and partly decided by the Tribunal.

14. We cannot ignore the fact that the limited issue before the Tribunal was whether the junior lady employees could be allowed to

supersede some senior employees on the principle of 30% reservation for women. In that the Tribunal merely decided that that reservation was not available to the concerned lady respondents. We fail to understand as to how this order of the Tribunal in O.A. No.199 of 1990 came to be treated as a general fiat. The reason for this is not far to see. The Government in the first instance and the Tribunal in the original application filed by the present applicants seem to have been impressed by the fact that the Special Leave Petition against this order was dismissed in limine by the Supreme Court. It has completely ignored that a dismissal by the Supreme Court in limine, though amounts to confirmation of the order challenged, the said order does not become the order of the Supreme Court. It can at the most be said that the Supreme Court did not find it fit to admit the Special Leave Petition against the impugned order, for whatever reason. The State Government as well as the Tribunal later on have committed an error in treating this order of the Tribunal to be the order of the Supreme Court. There is, therefore, there is a constant reference to the fact of the dismissal by the Supreme Court of the Special Leave Petition challenging the order of the Tribunal in O.A. No.199 of 1990.

15. In the reported decision in Supreme Court Employees Welfare Association v. Union of India (AIR 1990 SC 334), the position is clarified in paragraph 22 of the judgment. In this case also, the Supreme Court had summarily dismissed the Special Leave Petition filed against the earlier judgment of the Delhi High Court. When that dismissal was tried to be taken shelter, it was observed:

"It is now a well settled principle of law that when a Special Leave Petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corporation Ltd. v. State of Bihar, (19 86) 4 SCC 146:(AIR 1986 SC 1780) it has been held by this Court that the dismissal of a Special Leave Petition in limine by a nonspeaking order does not justify any inference that, by necessary implication, the contentions raised in the Special Leave Petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a Special Leave Petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where Special Leave Petition should be granted."

The observations apply to the present situation on all fours because here also, the Apex Court had not given any reasons for the dismissal of the Special Leave Petition in limine. The situation would have been quite different had the reasons been given and the contentions raised by the Government rejected as happened in Union of India v. All India Services Pensioners Association (AIR 1988 SC 501). In the same paragraph, the Apex Court goes on to hold:

"When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India."

This precise position was ignored when the Director passed his first order dated 22-9-1995 which came to be challenged in the present original

application, the order passed in which has fallen for consideration before us in this writ petition.

16. We will refer to paragraph 2 in the impugned order passed by the Director, which reads as under:

"Accordingly the seniority, communal rotation and wage cut were looked into at the time of appointments. Therefore in G.O. No.89 P&AR Department dated 17-2-1989, 30% was reserved for women candidates against the same some moved the Tribunal in O.A. No.199/90, the Tribunal directed the appointment on time scale of pay only on the basis of seniority of surveyor/draftsman on consolidated pay. (copy enclosed). A revision was filed against the said order was also dismissed. The S.L.P. No.25347/94 was also dismissed vide the reference 3rd cited above. (copy enclosed)." (emphasis supplied)

As if this is not sufficient, in the present impugned order passed by the Tribunal also there is a clear-cut reference to the dismissal by the Supreme Court in the following words in paragraph 8, which reads as under:

"No doubt applicants in O.A. No.199/90 have raised the plea that 30% reservation was applicable only in the case of direct recruitment and that had there been no reservation of 30% of the vacancies for the woman, their juniors who were respondents 8 and 9 therein could not have been promoted in preference to the applicants. But a perusal of the order dated 9-9-1991 reveals that the specific direction is that temporary appointment in the time scale of pay in accordance with the orders in G.O. 910, CT & RE dated 10-8-1983 may be made strictly in accordance with the seniority among the personnel on consolidated pay. The Supreme Court has dismissed the SLPCL/25347/94, dated 17-10-1994 . While so, it is not open to the applicants to plead that the judgment of the Supreme Court is not applicable to the facts herein." (emphasis supplied)

It is obvious, therefore, that the very approach of the authorities as also the Tribunal has gone wrong.

17. We have already shown that the Tribunal in O.A. No.199 of 1990 was not concerned with the other issues more particularly regarding the persons like the petitioners being granted the time-scale over and above their seniors. It will be seen from the departmental instructions dated 6-10-1983 that to give a prescribed turnout of work in the preceding six months was a pre-condition for being granted the time-scale, reference to which we have made in paragraph 6. There was nothing wrong on the part of the Government to prescribe such a condition for the grant of time-scale to the surveyors on the consolidated pay and indeed, till today, that condition has not been found fault with or even for that matter challenged by any employee. The respondents, who were not granted the time-scale, did not in any manner challenge the decision and kept quiet perhaps, realising that they had not complied with the pre-condition of giving the prescribed turnout of work. The departmental instructions dated 6-10-1983 came to be again considered subsequently where a change was brought about in the proceeding dated 14-9-1984. By these instructions, the earlier instructions dated 6-10-1983, 15-11-1983 and 17-2-1984 were cancelled and some fresh instructions came to be issued. We hasten to add that the petitioners were awarded the time-scale with effect from 1-7-1984. The cancellation of the instructions dated 6-10-1983 would, therefore, be of no consequence.

18. Learned counsel for the respondents very heavily relied on this proceedings to suggest that the earlier proceeding dated 6-10-1982 and even the latter proceedings dated 15-11-1983 and 17-2-1984, which favoured the 'selection' on the basis of the performance for the purposes of being granted the time-scale, were canceled by this proceedings. In the proceedings dated 15-11-1983 also, it was provided that those who had suffered a wage-cut for not more than five days could be considered as eligible for appointment in the time-scale posts. However, a person, who has given a better turnout of work shall be placed above another. It further provided that a person who had suffered the wage-cut for more than five days, would not be eligible for the grant of time-scale. Sentiment is to be seen in the further proceeding dated 17-2-1984 which suggests that the surveyors may be appointed to the time-scale subject to their satisfying the rules of such appointment. It is further stated that for the appointment on the timescale, there should be a minimum experience of six months as a contract surveyor of which not less than three months should be in the field work. Thus, atleast this point of time, the conversion of the surveyors on consolidated pay to the regular time scale was not automatic but depended upon the performance. In the aforementioned communication dated 14-9-1984 while it seems that revised instructions came to be issued for the fixation of seniority, here also, in paragraph 3.3, it is provided that only those who have received the full salary for six months period would be eligible for the temporary appointment on time-scale and that they were to be "selected" on the basis of the provisions contemplated by paragraphs 2(1) and 2(2).

19. In paragraph 4 or as the case may be paragraph 3(4) it is suggested as under:

"When temporary appointments are made on time scale of pay the educational qualification like degree and the passing of the departmental tests and like special qualification no concession will be given in respect of persons who are already appointed on time scale of pay as surveyors/draftsman and after joining duty those cases need not be altered but in respect of seniority what has been stated in para 2 should be followed after giving notice to them by the Assistant Director."

There is nothing in the whole paragraph 2(1), 2(2) and 2(3) to suggest the fixation of seniority in time-scale as per their original seniority in the posts of surveyors on consolidated pay. Even on the basis of this proceedings, which was sought to be relied upon by the respondents, it cannot be said that the Government had decided upon to fix the seniority of the time-scale surveyors on the basis of their original seniority in the selection as consolidated pay surveyors. In fact, we fail to follow as to how this proceedings could be relied on by the respondents. On the other hand, it is only in para 3(1) it is stated that all the appointments of time-scale of pay should be made only on the basis of seniority and on communal rotation. Specific exclusion of this paragraph in para 3(4) by mentioning only paragraph 2 speaks volumes and supports the proposition that those who were already appointed on time-scale, their cases were not to be altered and in respect of their seniority only the principles in paragraph 2(1), 2 (2) and 2(3) were to be followed and not paragraph 3(1). We have already shown that the principles enumerated in paragraphs 2(1), 2(2) and 2(3) had got nothing to do with the seniority of the persons like the petitioners who were already appointed in

the time-scale even before the advent of this proceedings dated 14-9-1984. All these complicated aspects never fell before the Tribunal in O.A. No.199 of 1990 and thus that order was passed by the Tribunal being totally unmindful of the fact that the grant of time-scale depended upon the performance and amounted to the "selection" for that purpose. We again repeat that the sole question which fell before the Tribunal for consideration in that case was whether the principle of 30% reservation for women was admissible for the purposes of grant of time-scale.

20. Now on the heels of the instructions dated 14-9-1984, came an order dated 23-8-1985, which was a seniority list for the Salem District Survey Unit. It has to be remembered that this service is a District Cader. The very opening words of this order are as follows:

"The seniority list of the Surveyors/ Draftsman selected from among the consolidated Surveyor/Draftsman in this District and appointed in the time scale of pay under rule 10(a)(i) of the General Rules of the State and Subordinate Services, subject to concurrence of the Tamil Nadu Public Service Commission, Madras is fixed with reference to special relation and communication as indicated in the annexure to this order." (emphasis supplied)

It is to be found that the petitioners find their names in this list and it is specified therein that the petitioners would be entitled to get the seniority with effect from 1-7-1984. Very significantly, the respondents' names are not to be found in this list and it was natural because, they, till then, were never selected probably owing to their not having given the required output of work. The petitioners had already thus stolen a march over the respondents owing their being selected for the time-scale post. We have deliberately quoted the order to show that what was being done for award of time-scale was actually the process of selection. It depended upon the performance during their tenure as the surveyors on consolidated pay. Again, obviously, even this factor never fell for consideration of the Tribunal.

21. There is undoubtedly an order by the Tribunal in O.A. No.56 of 1989 passed on 7-2-1991 whereby the Tribunal has held that the wagecut in case of consolidated-pay surveyors could not be allowed to come in their way of the grant of time-scale. The Tribunal has further held that such a wage-cut was not contemplated by G.O. Ms. No.910, which is the basic document for the grant of time-scale. One another order also came to be passed in O.A. No.381 of 1999, on 7-2-1992, on the basis of the order in O.A. No.56 of 1989, which we have referred to above. These two orders were also pointed out by the learned counsel for the respondents. However, both these orders would be of no significance to the present respondents. We sadly note that in both these orders the Director and the Assistant Director, who were the parties, had not even filed the counters, which is clear from the reading of both the orders, nor were the subsequent instructions after G.O. Ms. No.910 were brought to the notice of the Tribunal. We only wish to point out further that the interpretation of G.O. Ms. No.910 in O. A. No.56 of 1989 also completely ignores the phraseology used in G.O. Ms. No.910. In the Government's decision pertaining to suggestion (1) of the Director, the phraseology runs as under:

"...Director of Survey & Settlements is permitted to absorb the Surveyors appointed on consolidated pay in the regular cadre vacancies that exists and

that may arise in future in the time-scale of pay provided they are fully qualified to hold the posts as per the rules and the temporary appointments are made in accordance with the rules in force. ..." (emphasis supplied)
A close examination of both the orders in O.A. No.56 of 1989 and O.A. No.381 of 1999 do not show any consideration of the rules nor do these orders even refer to the departmental instructions dated 6-10-1983 , 15-11-1983, 17-2-1984 or 14-9-1984, to which we have made the reference earlier. However, a plain reading of G.O. Ms. No.910 suggests that the grant of time-scale was not to be automatic and it depended upon a candidate being fully qualified to hold the post as per the rules. In our opinion, the qualification contemplated in G.O.Ms. No.910 was not a mere educational qualification but it had to include the conditions for holding the post. We say this because the wording used is "qualification for holding the post" and not "qualification for being appointed to the post". Of course, we cannot now consider the correctness or otherwise of the order in these two applications but, if these orders were relied upon by the Tribunal in the present case, we would be certainly justified in deciding whether the Tribunal could have relied upon these orders. In our opinion, the Tribunal could not have relied upon these orders, atleast in the present case.

22. A clear reference is to be found to these orders in paragraph 5 of the impugned order of the Tribunal. What was missed was the fact that in both these orders, there was in reality no opposition worth the name and the Tribunal did not have the advantage of even perusing the subsequent instructions nor did it have any opportunity nor the rules brought to its notice which rules were very much in vogue. However, we will revert to the subject of rules in the later part of this judgment. Suffice it to say that the orders in these two original applications could not have been used as a launching pad by the Tribunal in the impugned order and the interpretation on the language of G.O. Ms. No.910 could not have been accepted as the correct interpretation thereof. We have already shown that while passing the order dated 22-9-1995 (impugned before the Tribunal), the predominant consideration was the order passed in O.A. No.199 of 1990 and the alleged direction therein as also the fact that the Special Leave Petition against this order was dismissed in limine by the Supreme Court, which is clear from paragraph 2 of the said order. In the introductory portion of that order, a reference has been made to the instructions issued regarding G.O. Ms. No.910 dated 10-8-1983. Very surprisingly, only two instructions have been mentioned therein. They are:
1.That the regular time-scale appointment should be made on the basis of seniority and communal rotation; and
2.Six months preceding the date of selection, the candidate should have received the full salary for six months and he should be eligible as per the seniority.
A very important instruction has been missed in this document also and that is about the candidate having shown the prescribed turnout of the work which instruction was issued in the proceedings dated 6-10-1 983. We are deliberately referring to that instruction because it has a direct nexus with the rules which were in vogue.

23. Mr. Kandasamy, learned counsel appearing for the

petitioners took us through the Tamil Nadu Survey Manual of Departmental Rules and pointed out that under Rule 12, a register is required to be maintained in Form No.58 for each Field Surveyor showing the monthly outturn, pay earned and passed and the punishment, if any, awarded to him. It specifically provides that regular charges should be framed when it is proposed to punish the individuals whose outturn is continuously short. Rule 24 of the Rules, which speaks of the duties of Survey Unit Officer, requires that such officer will record in the diary, the brief notes of inspection showing the nature of work inspected, result of inspection, quality of work, names of subordinates whose work was inspected and inspection reports showing action taken in cases in which work was found bad. Our attention was also invited to Rule 27 where also, the Survey Unit Officer is required to see that the pay of the Surveyors and Draftsman is to be regulated on the basis of their performance in the succeeding as per the time honoured departmental practice. Rule 70 provides that between 1st and 5th of each month, the Surveyors in each section should be assembled in convenient centers where the outturn for the previous month as per diaries should be verified by comparison with the records and the statements showing the outturn and the pay earned and recommended should be made out in Form No.61 for each Deputy Surveyor's range and submitted to the Survey Unit Officer for orders. Mr. Kandasamy, therefore, argues that it was not as if the principle of wage-cut and the principle of considering the outturn of work in the last six months was out of blue. Learned counsel points out that under the rules itself the surveyors were expected to give a particular outturn which will be clear from the rules and they suffered the wage-cut if they did not adhere to a particular quota of the work to be turnout by them. The learned counsel, therefore, says and in our opinion rightly that there was nothing wrong if these consolidated pay surveyors, before they could be brought on the regular time scale even in the absence of the recommendations from the Tamil Nadu Public Service Commission, were put to severe test of efficiency. Learned counsel points out that the wage-cut was directly depended upon the efficiency of the concerned person as also his ability to give the prescribed quota of the work. If, therefore, only the persons who did not suffer the wage-cut and the persons who had given the complete turnout of the work were alone found to be eligible to get the time-scale then, there was nothing wrong and such persons, who were found to be unfit by these rules, could not later on turn around and claim that the grant of time-scale depended solely on the seniority.

24. There is much substance in the argument. When in the light of these rules we see all the earlier departmental instructions issued by the Directors, we have no doubt in our minds that only those consolidated pay surveyors could be held to be qualified to get the timescale in terms of G.O. Ms. No.910 who had completed their work quota and had not suffered the punishment by way of wage-cut. Unfortunately, either in O.A. No.56 of 1989 or in the subsequent original application, which also went the same way, nothing was seen by the Tribunal. So also, while accepting those orders, in the present case also the Tribunal did not consider this serious situation and, therefore, in our opinion, the reliance of the Government on the orders of the Tribunal was completely uncalled for so as to hold the seniority in the consolidated pay surveyors list as the sole criterion for the grant of time-scale thereby, the Government would be totally ignoring the principles of

merit and the efficiency amongst the consolidated pay surveyors.

25. What further disturbs us is the time chosen by the Government for implementing the orders of the Tribunal and the so-called directions given therein. It is really unthinkable that a person who has won the time-scale sheerly on the basis of his merit and efficiency should be deprived of the same after thirteen long years. In this behalf, we cannot countenance the studied silence on the part of the respondents who must have drawn much lesser pay as compared to the petitioners because of the grant of time-scale to the petitioners with effect from 1-7-1984. Ultimately the respondents got the time-scale from 2 8-3-1988. For full four years the respondents kept quiet perhaps, realising that they had been rightly denied the time-scale on account of their not fulfilling the conditions of work turnout, etc. The respondents again maintained a studied silence as against the seniority list dated 23-8-1985 wherein they did not find their names. Even the Government did not find anything wrong and in our opinion rightly so because this specter of original seniority had emerged only after the orders passed by the Tribunal in the original application relating to the wage-cut and the 30% reservation for women after 1990. In fact, the respondents have at no point of time chosen to raise their voice in support of their seniority till such time that they thought it fit to implead themselves in the original applications filed by the petitioners before the Tribunal. By then, the petitioners had already been made Firka Surveyors and thereafter some of them had already earned their second promotion of Sub Inspector of Surveyors. It is really strange that the exercise to re-fix the seniority should have started in the year 1995 as it did and should have been implemented for the first time in the year 1996 by the order of the Assistant Director. If the seniority of the petitioners is fixed, as is being proposed to be done, the petitioners will not only be pushed back resulting in their reversions but would also severely suffer in their pay. We cannot, therefore, countenance such a disturbance of seniority atleast in case of the petitioners who were granted the time-scale on the basis of merit.

26. Learned counsel for the respondents argues that the respondents had no reason to cry. We do not agree. After all the petitioners were juniors to the respondents in their appointments as consolidated pay surveyors. If those juniors working in the same district of Salem started getting more pay by way of application of time-scale, it was certainly a matter to be complained of. So also, the facts of the subsequent regularisation and the promotions given to the petitioners. Learned counsel says that even the grant of time-scale was under rule 10(a)(i) whereby, no rights were created in the petitioners. We must hasten to add that rule 10(a)(i) was used only because these posts were supposed to have been filled up by the Tamil Nadu Public Service Commission and it was not possible to fill up those posts and therefore till such time the Public Service Commission had concurred with these postings, no regular postings could have been given. The fact of the matter remained that the petitioners not only draw more pay than the respondents but also enjoyed the further promotions. To set at naught this journey after thirteen years of the petitioners would certainly be unreasonable.

27. Learned counsel for the respondents also urged that it was only in the district of Salem that this anomaly took place because in all the other districts the time-scale was granted as per the seniority. We are not concerned with the other districts. We will have to go on the basis of the facts as they emerge from the records before us and if on the principle, which we have shown above, the petitioners earned their time-scale and the subsequent promotions, they could not be tinkered with by the Government, much less after a long period of thirteen to fourteen years.

28. Learned counsel lastly urged that the promotions earned by the petitioners could not have created a vested right in them since all these promotions were of temporary nature. We entirely agree. However, that is not the basis on which the petitioners are claiming the relief. We have pointed out earlier that the principle of original seniority adopted by the Government was solely based on the orders of the Tribunal which orders we have already analysed. In our opinion, the respondents went completely wrong in accepting the of original seniority in the cadre of consolidated pay surveyors. We are, therefore, of the firm opinion that the petitions must succeed and the order of the Tribunal must be set aside. It is accordingly set aside. The original applications are directed to be allowed. Under the circumstances, however, we do not propose to order the costs. Rule is made absolute in the above terms.

Index:Yes
Website:Yes

Jai

To:

1. The Director of Survey and Settlement, Chennai

2. The Assistant Director of Survey and Land Records, Salem

3. The Registrar
Tamil Nadu State Administrative Tribunal
Chennai 104